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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/036,546

01/07/2002

Kamran Loghman-Adham

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04/19/2006

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,546

Applicant(s)

LOGHMAN-ADHAM, KAMRAN

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 34-47 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 34-47, 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- I. Applicant's arguments, see paper, filed 2/3/06, with respect to the rejection(s) of claim(s) 2-7,9-20,48-51 under 35 USC 103(a) as being obvious over Lentini, Chatterjee and Nakajima have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

- II. Rejection of claims 2-7,9-20,48-51 under 35 USC 103(a) as being obvious over Lentini, Chatterjee and Nakajima will not be maintained in light of amendment filed 2/3/06. Claims 2-7,9-20,48-51 have been cancelled.

- III. New 35 USC 103(a) rejections

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34-44,46,47,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Louvet et al (US 5286475; 2/15/94) in view of Lukenbach et al (US 2004/0167046; 8/26/04) and Hahn et al (US 5804203; 9/8/98). Louvet teaches an aerosol composition in the form of a foam comprising a propellant such as carbon dioxide and an oily phase having a cosmetic oil, foaming agent, and optionally a fatty substance. See abstract, column 4 lines 30-43. Louvet teaches that the oil can be a synthetic ester such as propylene glycol dicaprylate. See column 3 lines 1-26. Louvet's Example 3 discloses that the oily substance (which can contain propylene glycol

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dicaprylate) makes up 47% of the composition. Louvet teaches that composition can comprise 0.2 to 0.5 % fragrance. See Examples 2-5. Louvet teaches that the composition can be applied to the face (includes the eyes) to remove make-up. See column 1 lines 5-10. Louvet does not teach the composition comprising 20-80 % glycerol tris-ethylhexanoate (trioctanoin) and instant amounts of ingredients. Louvet does not specifically state that the propellant and/or the fragrance can be an incapacitating agents. However, Lukenbach teaches a cosmetic spray composition that can exist as a foam comprising 30-80 % trioctanoin. See paragraphs 59, 74, claims 1,47,48. Lukenbach teaches the composition is applied to the face to remove make-up. See abstract. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Louvet to include the trioctanoin (glycerol tris-2-ethylhexanoate) taught by Lukenbach. One would have been motivated to do this since both references independently teach compositions for removing make-up. Hahn teaches that topical products contain chemicals which may produce irritation or inflammation (incapacitation) when applied to the skin. Hahn teaches that irritating ingredients include fragrances. See column 1 lines 61-65, column 2 lines 30-49. Note that instant claims 44 and 52 disclose that incapacitating agents are inflammatory agents. With respect to the instant amounts of propylene glycol dicaprylate / caprate, glycerol tris-2-ethylhexanoate, and incapacitating agent, one having ordinary skill in the art would have been expected to determine the optimum amount of ingredients. One would have been motivated to do this in order to develop a composition that would have been most effective in removing facial make-up. It is also possible that the optimum amounts of propylene glycol

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dicaprylate / caprate, glycerol tris-2-ethylhexanoate, and incapacitating agent determined at the time of the prior art invention may have fallen within the ranges specified by the claims since the amounts disclosed by the prior art and instant invention overlap. In addition, the amount of fragrance (incapacitating agent) taught in the reference is enough to cause sufficient inflammation to disable the recipient since the amount of fragrance disclosed in the prior art falls within the range of incapacitating agent disclosed in instant claim 46.

Claims 34,35,39-47,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al (US 5804203; 9/8/98) in view of Lukenbach et al (US 2004/0167046; 8/26/04). Hahn teaches a spray composition comprising strontium cation for reducing irritation cause by application of capsaicin (incapacitating agent) to skin. See abstract. Hahn teaches that the composition can contain a moisturizers such as propylene glycol dicaprylate/dicaprate. See column 19 lines 35-52. Hahn teaches that topical products contain chemicals which may produce irritation or inflammation (incapacitation) when applied to the skin. Hahn teaches that irritating ingredients include fragrances. See column 1 lines 61-65, column 2 lines 30-49. Note that instant claims 44 and 52 disclose that incapacitating agents are inflammatory agents. Hahn teaches that the composition can be applied to the face (including the eyes) to remove make-up. See column 1 lines 21-60, column 20 lines 15-35. Hahn does not teach the composition comprising 20-80 % glycerol tris-ethylhexanoate (trioctanoin) and 20-80 % propylene glycol dicaprylate/caprate. However, Lukenbach teaches a cosmetic spray composition comprising 30-80 % trioctanoin. See paragraphs 59, 74, claims 1,47,48. Lukenbach

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teaches the composition is applied to the face to remove make-up. See abstract. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Hahn to include the 30-80 % trioctanoin (glycerol tris-2-ethylhexanoate) taught by Lukenbach. One would have been motivated to do this since both references independently teach compositions for removing make-up. With respect to the instant amounts of propylene glycol dicaprylate / caprate and incapacitating agent, one having ordinary skill in the art would have been expected to determine the optimum amount of ingredients. One would have been motivated to do this in order to develop a composition that would have been most effective in removing facial make-up.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized flourish at the end.

Alton Pryor
Primary Examiner
AU 1616